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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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10 PABLO CHAVEZ,

11 Plaintiff,

12 v.

13 KINGS COUNTY, et al.,

14 Defendants.

Case No. 1:20-cv-00369-AWI-EPG (PC)

AMENDED FINDINGS AND  
RECOMMENDATIONS, RECOMMENDING  
THAT THIS CASE BE DISMISSED,  
WITHOUT PREJUDICE, BECAUSE OF  
PLAINTIFF'S FAILURE TO COMPLY WITH  
COURT ORDERS AND TO PROSECUTE  
THIS CASE

(ECF Nos. 32 & 35)

OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS

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17 Pablo Chavez ("Plaintiff") is a former prisoner proceeding *pro se* and *in forma pauperis*  
18 in this civil rights action filed pursuant to 42 U.S.C. § 1983.

19 On June 28, 2021, the Court issued findings and recommendations, recommending that  
20 this case be dismissed, without prejudice, because of Plaintiff's failure to comply with court  
21 orders and to prosecute this case. (ECF No. 38). The Court originally stated in its analysis that  
22 Plaintiff was incarcerated. (*Id.* at 3). However, it appears that Plaintiff is no longer  
23 incarcerated. (*See* ECF No. 25). While it does not materially change the analysis, the Court  
24 enters these amended findings and recommendations to fix this error.

25 On March 1, 2021, the Court issued an order requiring the parties to submit scheduling  
26 and discovery statements within thirty days. (ECF No. 32). On March 31, 2021, Defendants  
27 filed their scheduling and discovery statement. (ECF No. 34). Plaintiff did not file his  
28 statement, and his deadline to do so passed. Accordingly, on April 14, 2021, the Court directed

1 Plaintiff to file his statement. (ECF No. 35). Plaintiff was warned that “[f]ailure to comply  
2 with this order may result in the dismissal of this action.” (Id.).

3 On May 3, 2021, the Court granted Plaintiff an extension of time, giving him until June  
4 9, 2021, to file his statement. (ECF No. 37, pgs. 2-3). This extended deadline has passed, and  
5 Plaintiff once again failed to file his statement.

6 “In determining whether to dismiss a[n] [action] for failure to prosecute or failure to  
7 comply with a court order, the Court must weigh the following factors: (1) the public’s interest  
8 in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
9 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
10 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d  
11 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

12 ““The public’s interest in expeditious resolution of litigation always favors dismissal.”  
13 Id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly,  
14 this factor weighs in favor of dismissal.

15 As to the Court’s need to manage its docket, “[t]he trial judge is in the best position to  
16 determine whether the delay in a particular case interferes with docket management and the  
17 public interest.... It is incumbent upon the Court to manage its docket without being subject to  
18 routine noncompliance of litigants....” Id. Here, Plaintiff’s failure to file a scheduling  
19 conference statement as required by the Court’s orders and to otherwise prosecute this action is  
20 delaying the case. Specifically, the scheduling statement is an important document for the  
21 Court to use in making the schedule in this case. It also includes important information for the  
22 parties, such as “the location of potentially relevant documents,” and “when the parties will be  
23 prepared to participate in a settlement conference.” Plaintiff’s failure to file his statement has  
24 delayed this Court’s ability to issue a scheduling order for almost three months already, and  
25 Plaintiff still has not filed his statement. And without being able to issue a scheduling order,  
26 this case is stalled from progressing further with discovery and other case-related deadlines.  
27 Therefore, the second factor weighs in favor of dismissal.

28 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in

1 and of itself to warrant dismissal.” Id. (citing Yourish, 191 F.3d at 991). However, “delay  
2 inherently increases the risk that witnesses’ memories will fade and evidence will become  
3 stale,” id. at 643, and it is Plaintiff’s failure to comply with court orders and to prosecute this  
4 case that is causing delay and preventing this case from progressing. Therefore, the third factor  
5 weighs in favor of dismissal.

6 As for the availability of lesser sanctions, given that Plaintiff has chosen not to  
7 prosecute this action and has failed to comply with the Court’s orders, despite being warned of  
8 possible dismissal, there is little available to the Court which would constitute a satisfactory  
9 lesser sanction while protecting the Court from further unnecessary expenditure of its scarce  
10 resources. Considering Plaintiff’s *in forma pauperis* status, it appears that monetary sanctions  
11 are of little use. And given the stage of these proceedings, the preclusion of evidence or  
12 witnesses is not available. Additionally, because the dismissal being considered in this case is  
13 without prejudice, the Court is stopping short of using the harshest possible sanction of  
14 dismissal with prejudice.

15 Finally, because public policy favors disposition on the merits, this factor weighs  
16 against dismissal. Id.

17 After weighing the factors, the Court finds that dismissal without prejudice is  
18 appropriate. Accordingly, the Court HEREBY RECOMMENDS that:

- 19 1. This case be dismissed, without prejudice, because of Plaintiff’s failure to  
20 comply with court orders and to prosecute this case; and
- 21 2. The Clerk of Court be directed to close this case.

22 These findings and recommendations are submitted to the United States district judge  
23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
24 (14) days after being served with these findings and recommendations, any party may file  
25 written objections with the court. Such a document should be captioned “Objections to  
26 Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be  
27 served and filed within fourteen (14) days after service of the objections.

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1 The parties are advised that failure to file objections within the specified time may  
2 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.  
3 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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5 IT IS SO ORDERED.

6 Dated: June 30, 2021

/s/ Eric P. Grogan  
7 UNITED STATES MAGISTRATE JUDGE  
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